

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Miskovski	Team: Squad #03	CCRB Case #: 202000957	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/01/2020 7:36 PM, Saturday, 02/01/2020 7:36 PM	Location of Incident: § 87(2)(b) § 87(2)(b) hallway and outside	Precinct: 71	18 Mo. SOL 8/1/2021	EO SOL 3/18/2022	
Date/Time CV Reported Tue, 02/04/2020 6:55 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 02/04/2020 6:55 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Francisco Diaz	27416	952677	GVSD Z1 VRTF
3. DT3 Kevin Adair	15183	955706	INT FIO PRG
4. POM Adam Elmaadawy	10563	956618	071 PCT
5. LT Daniel Guida	00000	941862	066 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Michael Gonzalez	5947	943313	INT FIO PRG
2. SGT John Kenny	05559	950674	I.A.B.
3. POF Natalia Galarza	01449	966582	071 PCT
4. PO Clifford Scanlon	06416	961253	INT FIO PRG
5. PO Andreas Sargent	24928	943785	PBBS SU PST
6. PO Anderson Thimote	16504	957399	071 DET
7. SGT Martin Cunningham	02100	946888	071 PCT
8. PO Mario Bueno	11861	960290	084 PCT
9. PO Breanna Depasquale	21026	963956	GVSD Z1 VRTF
10. PO Frank Beers	17641	945498	071 DET
11. PO Jason Schreckenstein	01340	956247	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Daniel Guida	Abuse: Lieutenant Daniel Guida entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B. An officer	Abuse: At § 87(2)(b) in Brooklyn, an officer drew his gun.	§ 87(2)(b)
C.POM Francisco Diaz	Discourtesy: In the hallway of § 87(2)(b) Police Officer Francisco Diaz spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D.POM Francisco Diaz	Force: In the hallway of § 87(2)(b) Police Officer Francisco Diaz used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
E.DT3 Kevin Adair	Force: In the hallway of § 87(2)(b) Detective Kevin Adair used physical force against § 87(2)(b)	
F.POM Francisco Diaz	Force: In the hallway of § 87(2)(b) Police Officer Francisco Diaz used physical force against § 87(2)(b)	
G.POM Adam Elmaadawy	Abuse: Outside § 87(2)(b) in Brooklyn, Police Officer Adam Elmaadawy sexually humiliated § 87(2)(b)	

Case Summary

On February 5, 2020, § 87(2)(b) filed this complaint online with the CCRB on behalf of herself, her sons, § 87(2)(b) and § 87(2)(b) both of whom were 16 years old at the time of the complaint. The case was closed pending litigation on February 19, 2020. It was subsequently reopened on February 24, 2021, per § 87(2)(b) request.

On February 1, 2020, at approximately 7:30 p.m., officers from the 71st Precinct anti-crime team, including Police Officer Francisco Diaz, Sergeant Martin Cunningham, Police Officer Breana Depasquale, Police Officer Clifford Scanlon, Police Officer Andreas Sargent and Sergeant John Kenny, conducted an interior patrol of § 87(2)(b) in Brooklyn. During the patrol, officers from the team encountered a small group of teenage males smoking marijuana in the hallway. While the officers spoke with the teenagers, they noticed loud music and the odor of marijuana from § 87(2)(b). The officers called for other units to respond. Several officers from the 71st Precinct, including the Special Operations Lieutenant Daniel Guida, Detective Michael Gonzalez, and Detective Kevin Adair arrived at the location.

At some point, the door to § 87(2)(b) the residence of § 87(2)(b) § 87(2)(b) and § 87(2)(b) was opened. Lt. Guida led the officers inside of the apartment and ordered the group of teenagers, including § 87(2)(b) § 87(2)(b) and their unidentified friends, inside to exit the apartment (**Allegation A: Abuse of Authority**, § 87(2)(g)). During the entry, an officer allegedly had his firearm out of its holster and shouted at § 87(2)(b) to get on the ground (**Allegation B: Abuse of Authority**, § 87(2)(g)). The officers directed all the teenagers to exit the apartment and stand in the hallway. While the teenagers stood in the hallway with the officers, § 87(2)(b) took his phone out of his pocket to try to call an individual. PO Diaz told § 87(2)(b) to put away the phone and repeated his instruction, saying, “Off the fucking phone. I’m not going to tell you again. Give me the phone,” (**Allegation C: Discourtesy**, § 87(2)(g)). § 87(2)(b) did not put his phone away, causing PO Diaz to tell him that he would have to put § 87(2)(b) in handcuffs since he was not cooperating. PO Diaz attempted to grab § 87(2)(b) arms but was unable to do so. PO Diaz used a takedown on § 87(2)(b) to place him on the ground to handcuff him (**Allegation D: Force**, § 87(2)(g)). Det. Adair assisted in handcuffing § 87(2)(b) but once they finished, § 87(2)(b) told Det. Adair that he would spit in his face. When they stood him up, § 87(2)(b) spat in Det. Adair’s face, and Det. Adair immediately pushed § 87(2)(b) away from him (**Allegation E: Force**, § 87(2)(g)). § 87(2)(b) and Det. Adair fell forward, and § 87(2)(b) managed to break free, but ran toward PO Diaz. PO Diaz grabbed § 87(2)(b) from behind with one hand on his back and the other near his head and took § 87(2)(b) to the ground a second time (**Allegation F: Force**, § 87(2)(g)). Due to the scuffle and the chaotic nature of the scene, Lt. Guida ordered the officers to take all the teenagers back to the precinct stationhouse to be processed and summonsed. The officers called for transportation assistance. Police Officer Adam Elmaadawy and Police Officer Natalia Galarza, both of the 71st Precinct, arrived at the location and escorted § 87(2)(b) to the police vehicle. While PO Elmaadawy patted down § 87(2)(b) outside of the vehicle, the latter told PO Elmaadawy to stop. PO Elmaadawy responded to § 87(2)(b) “It’s not that big, relax. Take it easy. What are you 14? Relax. Still didn’t even go through puberty yet. Shhh,” and then placed § 87(2)(b) into the car and said, “Good boy,” (**Allegation G: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was arrested § 87(2)(b) by Det. Gonzalez for resisting arrest, obstruction of governmental administration, possession of marijuana, and physical harassment (BR 01). Additional individuals were given summons at the stationhouse: § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

was arrested at the location in addition to § 87(2)(b) § 87(2)(b)

The investigation requested body-worn camera (BWC) footage, but due to the involvement of several minors and the other sealed arrests, the NYPD was only able to release five out of twenty-seven video recordings (BR 04). The investigation received BWC footage from Det. Gonzalez, PO Diaz, Sgt. Kenny, PO Elmaadawy, and PO Galarza (BR 05-09).

Findings and Recommendations

Allegation (A) Abuse of Authority: Lieutenant DANIEL GUIDA entered § 87(2)(b)

§ 87(2)(b) in Brooklyn.

Allegation (B) Abuse of Authority: At § 87(2)(b) § 87(2)(b) in Brooklyn, an officer drew his gun.

It is undisputed that § 87(2)(b) § 87(2)(b) is a single-bedroom apartment. The entrance leads directly into a very small vestibule. Directly across from the entrance is the kitchen and to the left of the kitchen is the living room which also functions as a bedroom for § 87(2)(b) and § 87(2)(b). Past the living room is the bathroom and § 87(2)(b) bedroom. During the incident, § 87(2)(b) was not home.

In his CCRB interview, § 87(2)(b) stated that he had approximately four friends of unknown ages who he refused to identify in § 87(2)(b) along with his brother § 87(2)(b) in the afternoon of February 1, 2020 (BR 10). At approximately 7:30 p.m., the friends and the § 87(2)(b) were playing video games in the living room. No one was smoking marijuana or drinking alcohol. At some point, § 87(2)(b) went to the bathroom. When he exited the bathroom, an officer in plainclothes, described as an Asian male, standing at 5'2" tall, appearing to be in his 40s, and wearing glasses, stood in the living room with his firearm out of his holster and yelled at § 87(2)(b) "Freeze! Get on the ground!" He did not get on the ground and froze due to the shock. The officer walked with § 87(2)(b) and directed him out of the apartment. At a later date, § 87(2)(b) spoke with the friends and learned that they had opened the door to the apartment, thinking that someone was knocking. As soon as the friends opened the door, twenty officers entered the apartment.

In his CCRB interview, § 87(2)(b) stated that he had trouble remembering the incident (BR 11). He did not see how the officers entered the apartment because he was in the living room/his bedroom area playing video games with some friends who he refused to identify. He believed there were approximately five to seven people in the apartment at the time. The group was playing video games and was yelling and playing music. He admitted that several of the people in the apartment were actively smoking marijuana and did not know anything about drinking alcohol. He noticed five to six officers in plainclothes entering the apartment by walking in through an open front door. He did not see any of them with their guns drawn. He knew that police officers confiscated several bags of marijuana from the apartment, but he did not know where they were located, nor the amount of marijuana recovered. The officers let him stay in the apartment, while they made everyone else leave. He could not remember how § 87(2)(b) left the apartment because § 87(2)(b) has been taken from the apartment by the police many times and has had many incidents that would get mixed in his head.

The investigation was unable to contact the other individuals in the apartment because neither § 87(2)(b) nor § 87(2)(b) were willing to provide their identities, contact information, or any identifying information in their interviews. According to the 71st Precinct Command Log for the incident date (BR 02), the following individuals were given summonses at the stationhouse for their activity at § 87(2)(b) § 87(2)(b)

§ 87(2)(b) The investigation was

unable to find contact information the individuals despite conducting searches on Lexis/Nexis, CLEAR, and BADS. The investigation found possible contact information for § 87(2)(b) and § 87(2)(b) but was unable to establish contact with either individual after several calls and letters (**BR 17-19**).

Lt. Guida in his interview stated that members of the precinct anti-crime unit had called for other officers to assist in the apprehension of two individuals at § 87(2)(b) one of whom had a knife on their person (**BR 12**). Lt. Guida was familiar with the location of § 87(2)(b) and also § 87(2)(b) within it. He noted that the building is known throughout the precinct as a location with high-gang activity. In 2019, there were two instances of shots fired within the building. He noted that there had been several gun arrests at the location, and that one of them involved a perpetrator running into § 87(2)(b) itself. To his knowledge, two gangs operate out of the building, “Y as Folk” and “Crown Street Crip.” He did not have personal experience with § 87(2)(b) but noted that there had been previous I-Cards issued for him over the years.

Lt. Guida continued to explain in his interview that when he arrived at the location with his operator, Det. Gonzalez, they walked to the fourth floor of the apartment building and immediately smelled the odor of burnt marijuana (**BR 12**). There were roughly six officers present, along with Det. Adair, Sgt. Kenny, PO Thimote, and PO Diaz from what he could remember. As the officers worked with the two teenage males they had in the hallway, Lt. Guida heard loud music and voices from inside of § 87(2)(b) and it sounded like a party to him. As the officers handcuffed and arrested the teenagers in the hallway, Lt. Guida heard the sound of the door to § 87(2)(b) opening behind him. He turned and saw two teenagers standing in the doorway. He did not hear anyone knock on the door and would have known since he was directly in front of it. No officer instructed anyone to open the door. From his vantage point, Lt. Guida could see over the two teenagers into the apartment. He saw approximately ten teenagers inside of the apartment and one male child who appeared to be ten or twelve years old because he was much smaller than the others. Some of the teenagers were smoking marijuana cigarettes and drinking out of Hennessy bottles. From the doorway, he could see into the kitchen and noticed clear Ziploc bags with vegetative marijuana and a pair of scales on the table. He could not recall the specific amount of marijuana on the table. He was approximately five feet away from the kitchen and the apartment lights were on. He also noted that that when the door opened the odor of marijuana grew stronger.

Lt. Guida instructed the two teenagers at the door to exit the apartment and wait in the hallway (**BR 12**). Lt. Guida did not see any adults inside of the apartment. He walked into the apartment and straight into the kitchen to ensure the seizure of the drugs. He told the occupants that they were officers, and took the scales and marijuana into his possession, ordering the teenagers to leave the apartment. He remembered that at some point, Det. Gonzalez entered the apartment and a couple other officers who he could not remember also entered and helped get the teenagers into the hallway. He did not see any officer unholster their firearm, nor did he do so himself. He did not hear any officers instruct anyone to freeze and get on the ground. He also did not see any Asian officers at the location nor any officer who was approximately 5’2” tall. He did not have any safety concerns upon entering since the apartment was well lit and each person could be seen. He noted there was no reason to unholster a firearm. He did not believe anyone in the apartment to be armed.

Lt. Guida explained that he was the ranking officer at the location, and it was fully his decision to have the officers enter the apartment after him (**BR 12**). He could not recall the exact officers who he had directed to enter. He entered the apartment because of the drug use, drugs, and paraphernalia in plain sight. He cited that due to the large group of teenagers and the presence of paraphernalia like scales and baggies, there could have been packaging and distribution taking place at the location with minors present. He believed that if he did not go immediately into the apartment, they would have destroyed the drugs and paraphernalia. Furthermore, since he did not see any adults and believed that there were minors in the apartment, along with a possible child, he believed that if he did not enter at that point, then it would create unsafe conditions for the minors.

He believed that the drug use and packaging were the unsafe conditions and improper for the welfare of the minors. There were no other reasons for his entry and refusal to wait. Lt. Guida noted that all of the observations he testified to were in his BWC footage.

Det. Adair, PO Diaz, and PO Elmaadawy all provided similar testimony as to the history of § 87(2)(b) and its notoriety in the precinct (**BR 13-15**). None of the above officers entered the apartment to their knowledge. None of the officers recalled any officer resembling a 5'2" tall Asian male, seeing an officer enter with their firearm drawn, or even anyone shouting at an occupant to get on the ground.

BWC footage provided to the investigation did not capture the exact moment of entry into the apartment (**BR 05-09**).

Det. Gonzalez's BWC footage in IA#106 is the only footage that begins to partially show the entry (**BR 05**). Between 00:00 and 1:24, Det. Gonzalez enters the apartment building and handcuffs someone in the hallway and they discuss a knife. Approximately six other plainclothes officers stand around in the hallway. At 1:24, one of the teenagers to the left of the screen asks why he is being detained and if it is a crime to smoke marijuana in the building. The officers in the hallway respond that it is a crime to smoke in the hallways. The door to § 87(2)(b) has been closed during this entire time. By 01:33, Lt. Guida's voice can be heard saying, "Let's go in here," and as Det. Gonzalez turns, the door to § 87(2)(b) is open and Lt. Guida walks inside with other officers behind him. None of the officers appear to have their guns drawn and none of them are Asian males or appear to be 5'2" tall. Det. Gonzalez stays outside of the apartment by one of the teenagers and talks about a knife. By 03:28, someone can be heard asking, from inside the apartment, "Where is § 87(2)(b) your brother? Is he here tonight? Are you the only one home? You let all these kids in here tonight? Who lives here?" However, at 03:21, a brief glimpse of § 87(2)(b) is seen standing at the end of the hallway. At 04:08, a plainclothes officer opens the door, and the kitchen is seen in a heavily obstructed view, and the officer says, "Lieu [Lieutenant]...you want?" and a scuffle is heard to the right of the screen.

The remaining BWC footage that the investigation received does not show the entry nor anything that helps to determine the facts around Lt. Guida's testimony (**BR 06-09**). None of the BWC footage from any of the officers shows an officer ever have his firearm drawn, nor can it ever be heard that someone shouted the instruction to get on the ground, and finally none of them show an officer similar to a 5'2" Asian male (**BR 05-09**). Lt. Guida's BWC footage was one of the files that were not provided due to the presence of minors and sealed arrests (**BR 04**).

The investigation only received the property vouchers for § 87(2)(b) and was unable to receive any others due to the minors and sealed arrests (**BR 20**). Property Voucher § 87(2)(b) lists twelve bags of marijuana recovered from § 87(2)(b). The weight/quantity of the marijuana within the bags is not listed in the voucher.

NYPD Event § 87(2)(b) is the only Event for the location, and according to the timestamps, only occurs during the incident, from an anonymous caller who reports fighting in the halls of § 87(2)(b) in Brooklyn (**BR 24**). Of the initial units identified in the Event, none of the anti-crime officers or plainclothes officers are Asian males.

In *People v. Diaz*, 81 N.Y.2d 106, 110 the court found that, "Under the plain view doctrine, if the sight of an object gives the police probable cause to believe that it is the instrumentality of a crime, the object may be seized without a warrant if three conditions are met: (1) the police are lawfully in the position from which the object is viewed; (2) the police have lawful access to the object; and (3) the object's incriminating nature is immediately apparent," (**BR 21**). In *People v. McBride*, 14 N.Y.3d 440, the court found that in order for officers to commit a warrantless entry into the home under exigent circumstances, they must consider the following factors: "(1) Gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause...to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful

circumstances of the entry,” (BR 22). New York State Penal Law Article 221 lists the elevating charges for possession of marijuana; depending on the weight of the marijuana, the crime ranges from a Class B Misdemeanor to a Class C Felony (BR 22).

Although § 87(2)(b) corroborated Lt. Guida’s account that marijuana was present in the apartment, the investigation is unable to determine the amount of marijuana that Lt. Guida observed in plain view absent any clear video depicting the entry or testimony from any independent witness. § 87(2)(g)

§ 87(2)(b). However, since the quantity of marijuana remains unknown, the investigation is unable to determine the gravity of the alleged criminal action of the teenagers in the apartment, which leaves the investigation unable to analyze Lt. Guida’s decision to enter under the qualifications of the exigent circumstances as established by the court. § 87(2)(g)

Since § 87(2)(b) and § 87(2)(b) both disagree about whether an officer entered with their firearm drawn, and since the officers could not recall anyone matching the description, the investigation is unable to determine the identity of the officer or if the alleged action occurred. No such officer is seen in any of the BWC footage nor is the alleged instruction by the officer captured in their audio. None of the officers recalled any officer having their firearm unholstered. Lt. Guida testified that there would be no reason for officers to enter with their firearms drawn as well. § 87(2)(g)

Allegation (C) Discourtesy: In the hallway of § 87(2)(b) in Brooklyn, Police Officer Francisco Diaz spoke discourteously to § 87(2)(b)

Allegation (D) Force: In the hallway of § 87(2)(b) Police Officer Francisco Diaz used physical force against § 87(2)(b)

Allegation (E) Force: In the hallway of § 87(2)(b) in the hallway, Detective Kevin Adair used physical force against § 87(2)(b)

Allegation (F) Force: In the hallway of § 87(2)(b) in the hallway, Police Officer Francisco Diaz used physical force against § 87(2)(b)

Allegations C, E, and F are pled based on the BWC footage.

In his CCRB interview, § 87(2)(b) stated that once he stood in the hallway with other friends, he tried to remove his cell phone out of his pocket (BR 10). Immediately five officers tried to grab his arms, causing his phone to fall out of his hands. The officers shouted, “Hands out!”. He then tried to spit at an officer but did not know if the spit made contact with the officer. Officers, who he could not see, attempted to grab him causing § 87(2)(b) to attempt to dodge it. Several officers then tackled § 87(2)(b) but he could not recall the details because he began to lose consciousness due to his stress and anger. He knew that at some point in the struggle, he was on the floor with an officer’s knee on his lower back while officers handcuffed him. Then, the officers lifted him up and escorted him out of the building.

In his CCRB interview, § 87(2)(b) stated that he did not see his brother interact with the officers in the hallway because he was inside the apartment, playing video games (BR 11).

In PO Diaz’s BWC footage, located in IA #107, captures the incident in part (BR 06). The footage shows PO Diaz standing in the hallway with several officers at the apartment, and five to six teenagers standing along the wall of the hallway of the building. At 03:08, the sound of an

outgoing facetime call can be heard. PO Diaz turns to § 87(2)(b) and says, “Off the phone my man.” § 87(2)(b) continues to call someone and looks to his phone in his left hand. PO Diaz walks closer and repeats, “Off the phone.” As he walks up to § 87(2)(b) he reaches out his hand to grab the phone, but § 87(2)(b) places it behind his back. PO Diaz begins to raise his voice, saying, “Off the phone! Off the fucking phone!” § 87(2)(b) begins to say something in protest, but PO Diaz steps directly in front of § 87(2)(b) with no distance between them. PO Diaz tells him, “I’m not going to tell you again, give me the phone.” The video then ends at 03:20 due to the camera falling.

The other part of the incident is caught on Sgt. Kenny’s BWC footage in IA #108 (**BR 07**). Sgt. Kenny stands in the hallway of the building close to § 87(2)(b) while PO Diaz stands at the end of the hallway with four teenagers standing along the wall. At 02:38, PO Diaz tells § 87(2)(b) “Off the fucking phone. I’m not going to tell you again,” causing Sgt. Kenny to turn toward the two. PO Diaz walks directly up to § 87(2)(b) and stands right in front of him in the corner of the hallway. PO Diaz asks § 87(2)(b) if he “wants to go in cuffs?” The sound of an outgoing call can be heard. § 87(2)(b) asks, “What are you doing bro?” The footage becomes blurry as Sgt. Kenny stands next to the two and appears to reach out his hands to § 87(2)(b). Someone can be heard saying, “Yo that’s a little-ass kid yo.” PO Diaz tells § 87(2)(b) “Hands behind your back. Stop resisting.” At 02:57, the footage becomes clear again, and § 87(2)(b) can be seen falling to the ground with Det. Adair and PO Diaz pushing him to the ground. A third officer kneels down near the area near § 87(2)(b) legs. At 03:08, handcuffs can be heard locking. At 03:32, § 87(2)(b) is still on the ground and says, “I will spit in your face my nigga.” Det. Adair says, “Go ahead,” leans in and lifts § 87(2)(b) from the ground. At 03:35, § 87(2)(b) jumps up and spits in Det. Adair’s face. At 03:36, though the video is blurry, Det. Adair is seen to quickly turn § 87(2)(b) away from him and push him in the back, while still grabbing § 87(2)(b) near the chest with his left arm. This causes § 87(2)(b) and Det. Adair to fall to the right of the screen, while the teenagers yell at them both. While he is off-screen, § 87(2)(b) evidently escapes Det. Adair’s grasp and runs back to the corner of the hallway, under the screen, because the officers turn toward that direction. At 03:39, PO Diaz can be seen in the corner of the hallway, grabbing § 87(2)(b) by his left arm and his jacket near the scruff of his neck. Due to officers standing in the way, the movements taken by PO Diaz and § 87(2)(b) are unclear. At 03:40, PO Diaz directs § 87(2)(b) back to the ground. The teenagers yell at the officers in the hallway, while the officers instruct them to stay back. At 04:02, PO Diaz stands § 87(2)(b) back up, by lifting by his arms, while one of the teenagers says, “You made him hit his head bro.” Sgt. Kenny remains with the teens in the corner as PO Diaz walks out of the frame with § 87(2)(b).

The rest of the BWC footage clips from the other officers do not show this interaction (**BR 05-09**).

In his CCRB interview, PO Diaz explained that he stood watch in the hallway with the teenagers who had been ordered out of the apartment since he was one of the original officers conducting a vertical patrol in the building (**BR 13**). He was unsure if the teenagers were being arrested or summonsed at that point in the incident. While he waited, he noticed that § 87(2)(b) appeared to be on his phone, calling or texting someone. PO Diaz could not remember the exact numbers of civilians and officers but noted that they were similar in number, with a few more civilians. PO Diaz feared that § 87(2)(b) could have been alerting someone else to the police presence or worse that he was requesting that other people arrive at the location to help them. PO Diaz believed that if more civilians arrived, the situation could be dangerous and unmanageable. PO Diaz told § 87(2)(b) to get off his phone and put it away. PO Diaz did not recall telling § 87(2)(b) to get off the “fucking phone” but once he reviewed Sgt. Kenny’s BWC footage, acknowledged that he used the discourteous language. He did not know why he used that specific language. § 87(2)(b) did not respond to PO Diaz and continued

to use his phone. PO Diaz told § 87(2)(b) again to put the phone away and walked up to him. § 87(2)(b) quickly tried to put his phone in his front jacket pocket as PO Diaz approached him. PO Diaz attempted to grab § 87(2)(b) arms to get the phone, but § 87(2)(b) turned to the wall and tensed his arms to prevent PO Diaz from pulling them. At that point, PO Diaz believed that he would need to handcuff § 87(2)(b) to prevent him from using his phone while the officers were securing the location. Since he could not get § 87(2)(b) to provide his hands, PO Diaz took § 87(2)(b) to the ground in order to more efficiently handcuff him in front of the group of civilians and officers. He could not remember the exact motions of the takedown, however, he knew that he used two hands to grab § 87(2)(b) and put him on the floor, while Det. Adair leaned over and assisted with the handcuffing. PO Diaz could not recall if anyone else assisted with the handcuffing, but § 87(2)(b) continued to try to pull his arms away from the officers. Det. Adair and PO Diaz were able to overcome his resistance and put his arms behind his back. PO Diaz was unsure if § 87(2)(b) was arrested or under investigation for a summons prior to his interaction, but he himself knew that he needed to handcuff § 87(2)(b) for safety.

PO Diaz explained that once he and Det. Adair finished handcuffing § 87(2)(b) they lifted him by his arms into a standing position (**BR 13**). As they did so, § 87(2)(b) told Det. Adair that he was going to spit in his face and followed through on his threat, hitting Det. Adair in the face with his spit. PO Diaz knew at that point specifically that § 87(2)(b) would be arrested for spitting in an officer's face. PO Diaz initially could not remember what happened afterwards, believing that the officers then took § 87(2)(b) to a police vehicle. Even once he viewed Sgt. Kenny's BWC footage of the interaction, he did not have any further independent recollection of the interaction. PO Diaz did not independently recall utilizing a second take-down after the spitting.

Det. Adair did not recall the incident in detail during his CCRB interview (**BR 14**). Det. Adair did not remember PO Diaz taking § 87(2)(b) to the ground. He remembered that there was a large group of teenagers being held in the hallway and that they were yelling at the officers. Det. Adair did not remember how § 87(2)(b) got onto the ground. However, he recalled that he assisted with lifting a handcuffed § 87(2)(b) from the ground. Once he stood up, § 87(2)(b) spat in Det. Adair's face. Det. Adair initially believed that he turned away from § 87(2)(b) after the spitting and had no further interaction with him. Once Det. Adair viewed Sgt. Kenny's BWC footage, he acknowledged his presence in the video, but it did not assist his independent recollection of the actions taken. He noted that he assisted in handcuffing § 87(2)(b). He noted that the video showed that he pushed § 87(2)(b) at the chest away from himself, and while he did not remember taking the action, believed that it was due to the fact that he wanted to create distance between him and § 87(2)(b) so that he would not be spat at again. He did not recall if he assisted with taking § 87(2)(b) to the ground for a second time.

Lt. Guida did not witness the struggle with § 87(2)(b) because he was inside of the apartment at the time; however, he noted that he heard a "scuffle" outside of the apartment (**BR 12**). PO Elmaadawy stated that he was not present during the scuffle with § 87(2)(b) and his BWC footage confirms that he was not present (**BR 15, 08**). The investigation was unable to interview Sgt. Kenny because he had since taken his vested interest retirement from the NYPD according to the NYPD Department Advocate's Office (DAO); however, DAO did not provide the date for the retirement (**BR 27**).

Threat, Resistance, and Injury report § 87(2)(b) completed by PO Diaz and entered into the system by Sgt. Kenny notes that PO Diaz utilized wrestling and grappling with § 87(2)(b) to overcome resistance or aggression (**BR 20**). It further notes that § 87(2)(b) also wrestled with the officers and participated in active resistance. The report notes that during the course of the interaction, § 87(2)(b) sustained minor swelling while resisting arrest. The attached photographs show a golf-ball sized swelling of § 87(2)(b) forehead

to the left of the left eye near the temple area (**BR 25**). TRI report § 87(2)(b) reported by Det. Adair and filed by Sgt. Kenny, notes that § 87(2)(b) spat on Det. Adair (**BR 20**). A request for Det. Adair's exposure report returned negative results (**BR 41**). The NYPD was unable to provide § 87(2)(b) arrest photograph because it was a sealed minor's arrest (**BR 42**). Arrest Report § 87(2)(b) states that § 87(2)(b) tensed up and refused to follow lawful instructions, and when the officers attempted to place him under arrest, he tensed and actively resisted arrest, then spitting on Det. Adair (**BR 01**). Medical Treatment of Prisoner Report § 87(2)(b) filed by Sgt. Kenny notes the swelling on § 87(2)(b) face as well but does not note any medical treatment (**BR 26**).

After PO Diaz reviewed the TRI report in his CCRB interview that showed swelling to § 87(2)(b) forehead on the left side of his face, he still did not recall the injury and was not sure if he or Sgt. Kenny took the photograph of the injury. He was unsure how § 87(2)(b) sustained it (**BR 13**).

NYPD Patrol Guide Section 203-10 (from the Patrol Guide in effect in February 2020) states that officers are prohibited from making discourteous remarks and discourteous behavior towards civilians, especially "discourteous remarks regarding another person's age, ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability (**BR 28**). DAO-DCT Case 2017-17276 states that discourtesies used by officers may be excused in the course of a violent confrontation and high-stress situations (**BR 29**).

NYPD Patrol Guide Procedure 221-01 instructs officers to use a reasonable amount of force to gain compliance from a subject, and they are to consider the following: "nature and severity of the crime; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number and size of subjects in comparison to the number of MOS; size, age, and condition of the subject in comparison to the MOS; subject's violent history if known; presence of hostile crowd or agitators; subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence," (**BR 30**). NYPD Patrol Guide Procedure 221-02 identifies active resisting as "physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody," (**BR 31**). It further instructs the officers to apply no more than the reasonable force necessary to gain control.

As shown in the BWC footage, the group of teenagers were standing around in relative silence when § 87(2)(b) was making a call on the phone. While PO Diaz may have had legitimate safety concerns of § 87(2)(b) calling other civilians at the time, the situation was not elevated or stressful due to any of the actions by the civilians in the hallway. The situation had not turned into a violent confrontation at the point that PO Diaz used the phrase "fucking phone." However, PO Diaz did provide the order three times prior to using the word "fucking," and at that point, § 87(2)(b) had moved the phone behind his back. Tensing and refusal to show the phone can increase the stress of the encounter, but are not, in themselves, violent actions. PO Diaz's repetition of the command serves to increase the urgency of the situation, but objectively, nothing had changed in the environment. In addition, PO Diaz testified that he did not know why he used the discourteous language. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Although § 87(2)(b) alleged a single takedown, the BWC footage and a preponderance of the evidence established that officers performed a second takedown and that Det. Adair also pushed § 87(2)(b) which the investigation added as allegations.

The investigation pleads the first take down against PO Diaz because the BWC footage establishes him as the only officer to utilize it, and not a large group as alleged by § 87(2)(b)

§ 87(2)(b) As § 87(2)(b) was at first being detained and then subsequently arrested, as noted in the arrest report, for his refusal to follow PO Diaz's lawful order, § 87(2)(g) § 87(2)(b) Though § 87(2)(b) denied resisting officers, the BWC footage shows his refusal to follow instructions and his resistance to PO Diaz. § 87(2)(g)

Once § 87(2)(b) admittedly and as captured on BWC footage, spat in Det. Adair's face, he had thus continued his resistance against officers. § 87(2)(g)

After Det. Adair's push, the group of teenagers had begun to yell at the officers, thus escalating the possibility of a dangerous situation and resistance by other members in the group. Since § 87(2)(b) who was already under arrest at this point, had escaped from Det. Adair's grasp and ran in the hallway past other officers, he had increased his level of resistance and engaged in a partial flight from the officers. § 87(2)(g)

Allegation (G) Abuse of Authority: Outside § 87(2)(b) in Brooklyn, Police Officer Adam Elmaadawy sexually humiliated § 87(2)(b)

Allegation G is pled based on PO Elmaadawy's BWC footage and was not alleged by the civilians.

In his CCRB interview, § 87(2)(b) explained that once the hallway incident had finished, PO Elmaadawy escorted him out of the apartment building and patted him down before placing him inside of a vehicle (BR 10).

PO Elmaadawy's BWC footage, located in IA #109, depicts this portion of the incident (BR 08). The footage begins with PO Elmaadawy escorting § 87(2)(b) out of § 87(2)(b) in Brooklyn and walking him to a marked police vehicle with PO Galarza. There are no other prisoners at the vehicle. At 03:00, PO Elmaadawy starts to pat down and search § 87(2)(b) before placing him in the vehicle. At 03:16, PO Elmaadawy recovers marijuana in a bag, but it is unclear where he recovered it from. At 03:46, PO Elmaadawy tells § 87(2)(b) to spread his legs and begins to pat the inside of his legs. At 03:52, § 87(2)(b) says, "There ain't nothing there!" while PO Elmaadawy continues to pat § 87(2)(b) left leg. PO Elmaadawy responds, "It's not that big, relax. Take it easy. What are you 14? Relax. Still didn't even go through puberty yet. Shhh." He then places § 87(2)(b) into the car and says, "Good boy." PO Elmaadawy never lowers § 87(2)(b) sweatpants during the pat-down.

In his CCRB interview, PO Elmaadawy did not recall making the statements (BR 15). PO Elmaadawy did not recall the incident at all nor any pat-down of § 87(2)(b). When he reviewed his BWC footage in the interview, he acknowledged making the statements. He did not

remember why he made the statement but believed that he was frustrated with § 87(2)(b) when he made it, though he explained that frustration was no excuse for the language. He noted that when he said, “It’s not that big, relax,” he was referring to § 87(2)(b) genitals. PO Elmaadawy was unsure of the exact area that he patted down.

NYPD Patrol Guide Section 203-10 (from the Patrol Guide in effect in February 2020) states that officers are prohibited from making discourteous remarks and discourteous behavior towards civilians, especially “discourteous remarks regarding another person’s age, ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability (**BR 28**). DAO-DCT Case 2017-17276 states that discourtesies used by officers may be excused in the course of a violent confrontation and high-stress situations (**BR 29**). NYPD Patrol Guide Section 205-36 defines sexual harassment as, “verbal or physical conduct of a sexual nature” that creates “an intimidating, hostile, or offensive work environment,” (**BR 32**). NYPD Patrol Guide Section 210-01 states that “the Department has a zero-tolerance policy toward all forms of sexual assault and sexual harassment of prisoners by other prisoners or any other person,” (**BR 33**).

By PO Elmaadawy’s own admission, there was no excuse nor were there any mitigating factors for his choice in language when speaking with § 87(2)(b). The BWC footage confirms that it was solely § 87(2)(b) PO Galarza, PO Elmaadawy and another officer present at the rear of the police vehicle. Furthermore, PO Elmaadawy’s choice to refer to the size of § 87(2)(b) genitalia during the routine pat-down of a prisoner before placing them in a police vehicle § 87(2)(g). The sexual nature of the language and belittling language served to create an offensive environment § 87(2)(g).

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 34**).
- § 87(2)(b)
 - § 87(2)(b)
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 - § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
- Lt. Guida has been a member of service for 15 years and has been a subject in 21 CCRB complaints and 86 allegations, of which three were substantiated:
 - 201707882 involved substantiated allegations of a frisk, a search of person, and a vehicle search against Lt. Guida. The Board recommended charges, and the NYPD forfeited five vacation days from him.
 - § 87(2)(g)
- PO Diaz has been a member of service for nine years and has been a subject in six other

CCRB complaints and sixteen allegations, one of which was substantiated.

- 201803402 involved substantiated allegations of a vehicle search against PO Diaz. The Board recommended Command Level Instructions, and the NYPD imposed Instructions.
 - § 87(2)(g) [REDACTED]
- Det. Adair has been a member of service for eight years and has been a subject in seven other complaints and 13 other allegations, none of which were substantiated. § 87(2)(g) [REDACTED]
- PO Elmaadawy has been a member of service for seven years and has been a subject in eight other CCRB complaints and 16 allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- A request for Notice of Claim was submitted to the Officer of the New York City Comptroller on February 2, 2022 and will be added to the case file upon receipt (**BR 37**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 3

Investigator:	<u>Michael Miskovski</u>	<u>Inv. Michael Miskovski</u>	<u>02/04/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Olga Golub</u>	<u>IM Olga Golub</u>	<u>02/04/2022</u>
	Signature	Print Title & Name	Date

Reviewer: _____

Signature	Print Title & Name	Date
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